



May 2, 2002

The Honorable Michael K. Powell
Chairman

The Honorable Kathleen Q. Abernathy
Commissioner

The Honorable Michael J. Copps
Commissioner

The Honorable Kevin J. Martin
Commissioner

The Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CTIA Application for Review of Wireless Telecommunications Bureau April 10, 2002 Letter, DA 02-857, Regarding Schedule For Auction Nos. 31 And 44 (WT Docket No. 99-168, GN Docket No. 01-74, WT Docket No. 02-55)

Dear Commission:

The Telecommunications Industry Association ("TIA") by this letter adds it support to requests that the Federal Communications Commission ("FCC" or "Commission") postpone the auction of licenses in the Upper and Lower 700 MHz bands (746–806 MHz and 698–746 MHz, Auctions 31 and 44)¹ currently scheduled to begin on June 19, 2002.²

¹ See Cellular Telecommunications & Internet Association Application for Review of the April 10, 2002 Wireless Telecommunication Bureau letter regarding the schedule for Auction Nos. 31 and 44 (dated Apr. 24, 2002).

² See Auction of Licenses in the 747-762 and 777-792 Bands Scheduled for June 19, 2002; Further Modification of Package Bidding Procedures and Other Procedures For Auction No. 31, *Public Notice*, DA 02-659 (rel. March 19, 2002), corrected by Erratum, *Public Notice*, DA 02-880 (rel. April 16, 2002); and Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 02-563 (rel. March 20, 2002).

On February 5, 2002, TIA formally adopted a carefully deliberated and crafted set of principles for the management of auctions consistent with sound telecommunications policy and spectrum management principles. These principles represent the consensus view of TIA's over 1,100 member companies that manufacture or supply the products and services used in global communications, including wireless networks and terminal equipment. TIA believes that the June 19, 2002 auctions are inconsistent with several of these principles, including:

- prospective bidders should be given sufficient time to make technology investment decisions, establish business plans, and develop bidding strategies;
- auctioned spectrum should be unencumbered or a relocation plan should be put in place, prior to auction, to create certainty for operators about when spectrum will be available for use;
- the objective of auctions should be to ensure that the entity obtaining the spectrum will put the public spectrum resource to its best and highest value use;
- auctions may be an effective license assignment tool, but they are not a substitute for sound spectrum allocation decisions;
- auctions should be structured to facilitate deployment of services and not be used solely as a means to generate public revenue;

Prospective Bidders Should Be Given Sufficient Time To Make Technology Investment Decisions, Establish Business Plans, And Develop Bidding Strategies.

It is impossible for a prospective bidder to make sound investment decisions and establish a viable business plan for bidding on spectrum when no certainty exists as to the availability of certain portions of these bands that currently are licensed to incumbent TV broadcasters in channels 52-59 UHF TV Band (“Lower 700 MHz”) and channels 60-69 UHF TV Band (“Upper 700 MHz”). Bidders must have an accurate understanding of when and how the band actually will be available for the deployment of commercial services. Otherwise, it is difficult to make an assessment of how much to invest in the license in consideration of future revenues, what type of financing will be needed -- and when -- in order to deploy a network and offer services, and even what type of technology solutions to seek from equipment suppliers.

Auctioned Spectrum Should Be Unencumbered Or A Relocation Plan Should Be Put In Place, Prior To Auction, To Create Certainty For Operators About When Spectrum Will Be Available For Use.

The Upper and Lower 700 MHz bands are heavily encumbered. To date, no relocation plan has been put in place that would guarantee the timely relocation of incumbent licensees. In the absence of a relocation plan that would allow prospective bidders to anticipate their deployment schedules, the value of the spectrum for

implementation of new services is greatly reduced. We applaud Chairman Powell's *Proposal for Voluntary Actions to Speed the Digital Television Transition* (April 4, 2002). However, the voluntary nature of these proposals do not go far enough in establishing certainty for prospective bidders as to when the spectrum actually will be available for use.

The Objective Of Auctions Should Be To Ensure That The Entity Obtaining The Spectrum Will Put The Public Spectrum Resource To Its Best And Highest Value Use.

It is clear that the spectrum will not be available to winning bidders for at least several years. Rapid developments continue in both wireless technologies and in the public's demand for new and innovative services and features. Accordingly, an entity bidding on spectrum today would have little chance of anticipating the technology choices and consumer preferences that will dictate the services that ultimately will be deployed in these bands. Accordingly, there is no assurance that a winning bidder would put the spectrum to its best and highest valued use.

Auctions May Be an Effective License Assignment Tool, but they are Not A Substitute for Sound Spectrum Allocation Decisions.

As noted in the Auction Reform Act of 2002, recently introduced in the U.S. House of Representatives,³ serious questions abound as to whether the original auction deadline is consistent with sound telecommunications policy and spectrum management principles. For example, a comprehensive plan is not yet in place for allocating additional spectrum for advanced wireless services, including third-generation services. The 700 MHz band may offer some solutions for this deployment, perhaps even as a home for displaced incumbents.

Also addressed in this proposed legislation is the serious interference problem currently experienced by Public Safety operators in the 800 MHz band. The FCC is in the process of determining how to resolve the problem.⁴ TIA's Private Radio Section ("PRS") has been actively engaged in these efforts. The PRS is concerned that the overall requirement for out-of-band emission limits for commercial systems is insufficient to protect public safety operators in the 800 MHz band. Moreover, if 700 MHz commercial systems are allowed to deploy in a manner consistent with the existing rules, the PRS believes that significant harmful interference to 700 MHz public safety

³ H.R. 4560.

⁴ In the Matter of Improving Public Safety Communications in the 800 MHz Band; and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, *Notice of Proposed Rulemaking*, WT Docket No. 02-55 (released Mar. 15, 2002).

systems will result.⁵ TIA PRS members that serve the public safety community are unanimous in their assessment that the current 700 MHz technical rules are a recipe for disaster that will frustrate the best intentions of Congress and the FCC to develop a new spectrum home for interoperable public safety communications. Until these important issues are resolved, the 700 MHz auctions should be delayed.

Auctions Should Be Structured to Facilitate Deployment of Services and not be used Solely As A Means to Generate Public Revenue.

Since prospective bidders will not be able to make technology investment decisions, establish business plans and develop bidding strategies on spectrum that is heavily encumbered with no relocation plan that would guarantee timely relocation, and since the interference problems between commercial wireless operators and public safety operators have yet to be resolved, these auctions are not consistent with sound spectrum management principles. Accordingly, it is difficult to avoid a conclusion that holding these auctions in the scheduled timeframe is no more than a means to generate public revenue. Only after the issues highlighted in this letter are addressed and resolved would the Commission be able to move forward with an auction that satisfies the public interest in managing this important and scarce national resource.

⁵ See, e.g., Notice of *Ex Parte*, the Telecommunications Industry Association, Wireless Communications Division, Private Radio Section, *Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168 (filed Apr. 4, 2002).

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For all of the above reasons, TIA respectfully urges the Commission to delay the spectrum auctions, numbers 31 and 44, that currently are scheduled for June 19, 2002.

Sincerely,

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